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11

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
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15 IN RE: CARDTRONICS ATM FEE NOTICE
16 LITIGATION

17 Member cases: 11cv217-BEN (BLM)
18 11cv236-BEN (BLM)
19
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Case No. 11md2245-BEN (BLM)

**NOTICE OF DEFENDANTS' *EX*
PARTE MOTION AND *EX PARTE*
MOTION TO CONTINUE
HEARINGS ON MOTIONS FOR
CLASS CERTIFICATION IN
CHRISTENSEN AND *SANDOVAL*
CASES**

Judge: Hon. Roger T. Benitez
Courtroom: 3

Oral Argument Not Required

NOTICE OF *EX PARTE* MOTION AND *EX PARTE* MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that defendants Cardtronics USA, Inc. and Cardtronics, Inc. (together “Cardtronics”) will and hereby do move before Honorable Roger T. Benitez, courtroom 3, at the United States District Court for the Southern District of California, located at 940 Front Street, San Diego, California, for an order continuing the Hearings on the motions for class certification of Plaintiffs in the *Christensen* and *Sandoval* cases (11-cv-217, Docket No. 23 and 11-cv-236, Docket No. 23) from March 12, 2012 to April 23, 2012. Today virtually identical Motions for Class Certification were filed in two other cases that are part of this MDL proceeding, *Johnson* and *Norris* cases (Docket Nos. 32 & 33), and each was noticed for Hearing on April 23, 2012. Efficiency for the Court and Counsel argues for hearing all motions on the same date. **Cardtronics requests immediate resolution of this Motion, because its Opposition to the first two motions is due Monday, February 27, 2012.**

As this motion is made on an *ex parte* basis, there is no Hearing date.

This motion is based on this Notice of *Ex Parte* Motion and *Ex Parte* Motion, the Memorandum of Points and Authorities combined herewith, and the Declaration of Douglas Lobel filed concurrently herewith, as well as all records and papers on file in this action and any oral argument or any other evidence that the Court may request or consider in any Hearing ordered on this motion.

Cardtronics gave notice of this *ex parte* motion in accordance with CivLR 83.3(h) as described in the Declaration of Douglas Lobel filed concurrently herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, Cardtronics respectfully requests that the Court continue Hearings on the class certification motions filed by Plaintiffs Sheryl Johnson and Gini Christensen (11-cv-217, Docket No. 23 and 11-cv-236, Docket No. 23) to April 23, 2012. In support of this motion, Cardtronics states as follows:

1. By this Court’s Order dated July 12, 2011 (Docket No. 2), Plaintiffs’ motions for class certification were required to be filed no later than February 3, 2012.

2. On February 3, 2012 Plaintiffs in four of the cases in this consolidated proceeding -- Johnson, Norris, Christensen, and Sandoval -- filed their respective class certification motions. (Docket Nos. 16 & 20; 3:11-cv-00236, Docket No. 23; 3:11-cv-00217, Docket No. 23.) Plaintiffs Christensen and Sandoval noticed Hearings on their class certification motions for March 12, 2012. Cardtronics' Opposition briefs to the motions of Christensen and Sandoval are therefore due Monday, February 27, 2012.

3. Neither Johnson nor Norris noticed a Hearing date for their respective motions. As a result, on February 16, 2012, the Court struck their motions due to this deficiency. (Docket Nos. 29 & 30.)

4. Today Plaintiffs Johnson and Norris re-filed their motions for class certification, and set a Hearing date for each Motion of April 23, 2012. (Docket Nos. 32 & 33.)

5. The class certification arguments of all of the Plaintiffs are essentially identical. The motions do not turn on any facts peculiar to each lawsuit. Instead, while the prose is slightly different from each other, the arguments and contentions of all of the motions replicate each other in almost all substantive respects.

6. No purpose is served by having two separate Hearing dates for essentially the exact same motions.

7. Furthermore, the very purpose of this Multidistrict Litigation Proceeding was to consolidate pretrial activities to avoid unnecessary duplication and any waste of the parties' and the Court's resources. As it currently stands, Cardtronics must file opposition briefs on two different days, and the Court will have to conduct two Hearings on the same issues. Furthermore, Cardtronics' lead counsel in Virginia will need to travel twice to California for the same arguments. (Declaration of Douglas P. Lobel in support of *Ex Parte* Motion ("Lobel Decl.") ¶ 6.)

8. For these reasons, Cardtronics respectfully submits that the Court should consolidate all of the class certification motions for a Hearing on the *same date*, and thus continue the Hearing on Christensen's and Sandoval's motions until April 23, 2012.

9. Cardtronics met and conferred with Plaintiffs' counsel in the *Christensen* and *Sandoval* cases, in an effort to submit this request as a joint motion. Counsel had represented,

1 earlier this week, that he was not opposed to continuing Christensen's and Sandoval's motions
2 from March 12, in order to be joined with the motions of Johnson and Norris. (Lobel Decl. ¶ 2.)
3 However, after Johnson and Norris re-filed their motions today, counsel for Christensen and
4 Sandoval stated that he was unwilling to commit to continuing these motions from March 12. (*Id.*
5 ¶ 4.)

6 WHEREFORE, for good cause shown, Cardtronics respectfully requests that the Court
7 continue the Hearings on the class certification motions in the *Christensen* and *Sandoval* cases to
8 April 23, 2012.

9 Dated: February 22, 2012

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